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## COUNTY GOVERNMENT IN NEW ENGLAND

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The county in the New England states as a territorial unit was established almost as early as the county in the Southern states. In both sections the original purpose of the county was the creation of a suitable district for the efficient administration of justice. While in the Southern states the county soon came to assume large powers in general administration, in the New England states the county developed little beyond the sphere of judicial administration. The local autonomy of the town hindered the development of the powers of the more artificial district of the county. The creation of the counties in all the New England states was made by the colonial or state legislatures at an early period when the town was sufficient for all recognized governmental needs.

As early as 1666 the General Assembly of Connecticut divided the commonwealth into four counties for judicial purposes. The five counties of Rhode Island were all incorporated between 1703 and 1747. Here they were regarded merely as judicial districts and they continue, up to the present time, in that capacity only. In New Hampshire the five original counties of Strafford, Rockingham, Hillsborough, Cheshire and Grafton, upon the recommendation of Governor Wentworth, were created by the legislature in 1771, for the purpose of judicial administration. All but two of the present fourteen counties of Massachusetts were incorporated before the Revolution. Nine were created before the close of the seventeenth century. Essex, Middlesex and Suffolk counties were established as early as 1647. In Maine, naturally, the counties are of later origin. From the original county of York the General Court of Massachusetts first created the counties of Cumberland and Lincoln in 1760, and in 1789 it created the two additional counties of Hancock and Washington. Ten years later the county of Kennebec was formed. All the remaining counties in Maine were incorporated in the nineteenth century and all but Oxford and Somerset, established in 1805 and 1809, respectively, were organized after Maine became a separate state (1819).

Vermont prior to the Revolution was divided into four counties. Of its present fourteen counties all except three were incorporated before the year 1800.

The county in New England, as in other parts of the United States, is a legal corporation for limited purposes. The New Hampshire, Massachusetts and Connecticut statutes define specifically the legal status of the county. The Massachusetts law with precision defines the county as, "a body politic and corporate for the following purposes: to sue and be sued; to purchase and hold, for the use of the county, personal estate and land lying within its limits, and to make necessary contracts and to do necessary acts relative to its property and affairs."

The county in the United States is commonly organized in the following ways: as a judicial district, as a police district, as a probate and land registry district, as a poor relief district, as highway district, as a school district, as a sanitary district, as an election district and as a fiscal district. In New England the county is in no state organized as a school district, or as a sanitary district. In Vermont only does the county act as a highway district, and here it is merely supervisory over the towns. In one state, New Hampshire, the county is organized as a poor relief district. In three states, Maine, Massachusetts and New Hampshire, the county is the legal district for probate and registry of land. As an elective district it is recognized in all of the states of New England. The county is regarded as the unit for canvassing the returns for state offices, though the towns, themselves, constitute the returning districts. The county, except perhaps in a few densely populated districts, does not share in the party organization. It is, however, an independent elective district for the election of county officers in all states except Rhode Island. In three states, Massachusetts, Vermont and Rhode Island, the county is recognized, to some extent, as an elective district in representation in the senate of the state. With the exception of Rhode Island, in all of the New England states the county is an independent fiscal unit, discharging its own financial obligations and raising its own taxes. In all of the states, the county is organized as a judicial district, and it is in this capacity that it performs its chief function, though here it acts rather as an agent of the state than as an organization for the conduct of local administration.

As a judicial district the county is recognized by the laws of

the states in the creation of civil and criminal courts within the county, which are, in general, presided over either by judges elected by the county, as in the case of Vermont, or by the judges of the superior or supreme court, assigned to county judicial districts, as in the case of Maine, Massachusetts, New Hampshire and Rhode Island. In Connecticut there is a double arrangement. In each of the five counties the common pleas courts have jurisdiction within a single county, while the superior court has sittings in all of the counties. The superior, or supreme (Maine) court judges who sit as county judges in all of the New England states except Vermont, are appointed by the governor and council, in Maine, Massachusetts, New Hampshire; and by the legislature in Rhode Island and Connecticut. They may be removed by the governor upon an address of both houses of the legislature. There is no provision for the removal of county judges who are elected for two years in Vermont. The short term, however, acts as an obligatory referendum upon the question of their removal. The long term, appointive, judiciary has constantly shown its superiority over the short term elective method of Vermont, but when, for any reason, an office has been made elective, no matter how inefficient such a method proves to be, it is practically impossible, owing to the opposition of the politicians, to again make it an appointive office.

In all of the states there is a clerk of court for the county. This officer is appointed by the judges of the court which he serves, in the states of New Hampshire, Vermont, Rhode Island and Connecticut. His term is, in New Hampshire for an unlimited period, in Vermont two years, in Rhode Island three years and in Connecticut one year. In Maine the clerk of the court is elected for four years and in Massachusetts for five years. He is, in each case, required to give bond, approved either by the court, or the governor and council, for the faithful performance of his duties. The efficiency of the court is, in no small measure, dependent upon the clerk. The New Hampshire method of appointment by the court for an indefinite period gives greater assurance of competent service.

In the states of Maine, Massachusetts and New Hampshire, where the county forms a district for probate administration, there is a judge of probate. In Maine he is elected for four years. In Massachusetts and New Hampshire he is appointed by the governor and council, for an indefinite term. In Vermont and Connecticut

judges of probate are elected biennially in districts smaller than the county. The removal of judges of probate may be accomplished by an address of both houses of the legislature in Maine, Massachusetts and New Hampshire. The appointment of a judge of probate is manifestly a better method of selection than that of popular election.

Registers of probate are elected by the voters of the county, in Maine, Massachusetts and New Hampshire. In Maine the term is four years, in Massachusetts five years and in New Hampshire two years. Registers of probate are required to give bonds, approved by the court. They may be removed by judge of probate in Maine, and by the supreme court in New Hampshire and Massachusetts. These officials also furnish bonds approved either by the court, or by the county commissioners. Registers of probate are purely administrative officers and as such might better be appointed than elected. Though the practice, where they are elected, is, in general, to continue them in office for a long term of years, yet it frequently happens that a most efficient man, with change of party, is removed, with great detriment to the efficiency of the office.

The sheriff is the oldest of the county offices. It existed under the colonial government and was, like the sheriff in England, an appointive office. It was not until the middle of the nineteenth century that it became an elective office in the New England states. In New Hampshire the change was not made until 1877, while in Rhode Island the sheriff is still an appointive officer, being appointed by the legislature. In all of the states except Rhode Island the sheriff is at the present time elected by the voters of the county. His term varies, being two years in Maine, New Hampshire and Vermont; four years in Massachusetts and Connecticut; five in Rhode Island. The sheriff may appoint one or more deputies who are responsible to him; though they, as well as the sheriff, are obliged to give bonds acceptable to the court, in New Hampshire, Vermont, Massachusetts and Rhode Island; to the county commissioners in Maine, or to the governor in Connecticut. Bonds required of sheriffs are generally large, being \$30,000 in New Hampshire and from \$25,000 to \$40,000 in Maine. In the other states the amount of the bond is less. Sheriffs may be removed by the supreme or superior courts in New Hampshire, Massachusetts, Rhode Island and Connecticut; while failure to give required bond vacates the office in Maine and Vermont. The duties of the sheriffs, in the main, like

those of the judges pertain to matters of state-wide rather than county concern. For the best interests of the state the appointment and compensation of the sheriff should be under the control of the central authority of the state.

The state's prosecuting officer in the county, variously styled, prosecuting attorney (Vermont); state's attorney (Connecticut); district attorney (Massachusetts); county attorney (Maine); county solicitor (New Hampshire), is, in all the states except Connecticut, an elective officer. In Massachusetts, the district from which he is elected is the judicial district and does not coincide with the single counties. In Suffolk county, which includes the city of Boston, there are two district attorneys, and it is now proposed that there be three. In Connecticut the state's attorneys, so called, for the various counties, are appointed by the superior court. The term of the county attorney is two years in Maine, New Hampshire, Vermont and Connecticut, and three years in Massachusetts. He may be removed by the action of the court in New Hampshire, Massachusetts and Connecticut. In Maine and Vermont action may be taken on county attorney's bond in case of misfeasance. The county attorney is obliged to give satisfactory bonds to the court, for the fulfilment of his official obligations. The county attorney may be considered in the same class also with the judges and sheriffs, in that his principal function is to act for the state in the enforcement of laws. Much of the present failure in the punishment of crime is due to the weak character of the county attorneys under the short term elective method. There is no office where the need is greater that it be put out of politics than the county attorney, while probably no office at the present time is more active in politics than this same office.

The officers having charge of the general, or local, administration of the county in four of the five New England states, where the county exists as a fiscal and administrative unit, are the county commissioners. In the fifth state, that of Vermont, the two assistant county judges act in the capacity of commissioners in the administration of county affairs. The board of county commissioners in each of the states of Connecticut, Massachusetts, Maine and New Hampshire consists of three members. In Massachusetts, Maine and New Hampshire the commissioners are elected upon the same suffrage basis and at the same time as state officers. The same is

true of the two county judges in Vermont who act as county commissioners. In Connecticut the commissioners are elected by the two houses of the legislature. The term of the commissioners varies, being two years in New Hampshire, three years in Massachusetts, four years in Connecticut and six years in Maine. The term of the county judges in Vermont is two years. A further difference in organization is seen in the manner of the renewal of the board of commissioners. In New Hampshire and Vermont there is an entire renewal of the board, the members all being elected at the same time. In Massachusetts one member is elected to the board each year and in Maine one every two years. In Connecticut the commissioners are elected, one at one biennial election, and two at the next. In Maine the county commissioners appoint a person not of their number to act as clerk. In Connecticut and New Hampshire one of the commissioners serves in this capacity, while in Massachusetts and Vermont the clerk of the court performs the duties of clerk.

The powers of the county commissioners in the New England states are considerably more limited than those belonging to the same office in the Middle and Southern states. In Vermont the two judges acting as commissioners are confined in their duties almost wholly to matters pertaining to the judicial administration of the county and the fiscal matters connected with the courts and jails. The county commissioners in Connecticut possess little more power; here the main functions are: care of county buildings, supervision of jails and the county home for dependent children, repair of highways and supervision of liquor licenses. In Massachusetts the county commissioners have comparatively few powers outside of those connected with the administration of justice. In New Hampshire the powers and duties of county commissioners are: custody of the county property, care of county buildings, care of county paupers, appointment of superintendent and other officers of the county farm, jail and house of correction, the purchasing and selling of real estate in connection with the county farm, court house, jail, or for other county uses; auditing claims against, or for, the county; issuance of county bonds when authorized by the county convention; authorization of the making of public records. In Maine somewhat larger powers are granted to the county commissioners. The most important of such powers is that of determining the county

estimates and causing the taxes to be assessed in the various towns to cover the amount of county expenditures. In addition to this the county commissioners have the following powers: auditing the accounts of the receipts and expenditures of the moneys of the county; representation of the county in all legal matters; caring for the property and managing the business of the county; laying out, altering, or discontinuing public highways; repairing of court houses and jails; providing for the safe keeping of public records of the county; examination of jails; provision for employment of prisoners and borrowing of money not to exceed \$10,000 for use of the county.

Vacancies in the office of county commissioners are filled by the governor and council, in Maine and Massachusetts; by the supreme court in New Hampshire and by the governor in Vermont and Connecticut. A commissioner may be removed for official misconduct by the supreme court in Maine, New Hampshire and Massachusetts. In Connecticut the state treasurer may require a new bond of a commissioner at any time and failure to comply with such demand is made equivalent to resignation on the part of the commissioner. County commissioners are in all cases required to furnish bonds approved by the higher court or by the state treasurer. A larger degree of "home rule" for counties in purely administrative matters is desirable. This could be accomplished without detriment to the state if a separation should be made between the functions in which the county acts as a state agent, and those in which it acts primarily, for the welfare of the county. If the state assume the financial burden of judicial administration, as it quite generally does in New England, the general administration may be left to the county without legislative interference. The organization of the board of county commissioners as it exists in Maine, one member being elected biennially for a term of six years, is best adapted for the securing of good men, efficient service, and continuity of public policy in county affairs. This system has been in operation in Maine since 1882. In New Hampshire where there is the opposite policy, of short term and total removal of the board, there have been repeated attempts to secure the adoption of the Maine plan. A bill providing for this method was introduced into the New Hampshire legislature for 1913 but without avail.

The county treasurer, which is found in all the states except



Rhode Island, is elected in Maine, Massachusetts and New Hampshire; and appointed in the other two states. In Vermont the two commissioner judges appoint the treasurer and in Connecticut the board of commissioners appoints him. His term is short in every case, being for three years in Massachusetts and two years in the other four states. Besides making the treasurer accountable through a short term, the laws of every state go into great detail as to the method of keeping accounts and rendering reports. The bonds required of the treasurer are fairly large. In all the five states the treasurer's bonds must be approved by the county commissioners. Appointment to vacancies in the office of county treasurer is usually made by the county commissioners. The method of removal, when provided, is by the courts. Inasmuch as the county commissioners are the responsible agents of the voters of the county, in conducting the business of the county, the appointment of the county treasurer should be placed in the hands of the commissioners, in order to centralize financial responsibility. This would be merely extending the principle under which the commissioners at present are required to approve the bonds of the treasurer, and appoint to fill vacancies. The concentration of fiscal power in the hands of the county commissioners might well be supervised on the part of the state through appointment of a county controller by the governor, as is now the method in Massachusetts.

Central supervision over the accounts of the county is secured through the appointment of county auditors in the states of New Hampshire, Vermont and Connecticut and of county controllers in Massachusetts. In New Hampshire, the county auditors, consisting of two persons, one from each of the leading parties, are appointed annually by the supreme court. These officers are required to examine and audit the accounts of the county commissioners, superintendent of the county farm and county treasurer. In Vermont the two commissioner judges appoint the county auditors, one from each county, for a term of two years. Their duties are similar to those of county auditors in New Hampshire. In Connecticut two county auditors, representing different parties, are appointed by the county convention at the time of the biennial session of the legislature. These auditors are required to examine and audit the accounts of the county commissioners, county treasurer and jailor for the current fiscal year and the proposed budget for the next fiscal year. County

controllers in Massachusetts are appointed, one for each county, by the governor for three years. Three deputy controllers may be appointed by each controller.

The responsibility for the financial budget of the county varies in the five states, where the county exists as a fiscal unit. In Massachusetts the general court upon the recommendation of the county commissioners approves the expenditures of the respective counties. The county commissioners are authorized to apportion the county taxes according to the latest state valuation and to certify to the assessors of the several cities and towns their respective proportions of the county tax. The taxes are collected by the town or city treasurer and upon warrant from the commissioners are paid into the county treasury. In Vermont the two assistant county judges determine the budget of the county and fix the rate of taxation which the towns are obliged to levy for county expenses. In Maine the determination of the fiscal needs of the county and the rate of taxes necessary to meet such obligations devolves upon the county commissioners. In both Connecticut and New Hampshire there is a somewhat peculiar political body which has control of county finances. This body is known as the county convention. In Connecticut it is composed of those members of both houses of the state legislature who are elected from any given county. In New Hampshire it consists of the representatives of the towns of a given county in the house of representatives of the state legislature. In Connecticut the county convention of the various counties may not only vote the general amount of the county appropriations, but, as well, the appropriations for any specific items of county expenditures for the two fiscal years next ensuing, or for the repairs and alterations of county buildings during the same period, and it may lay any tax upon towns of the county for any county purpose, provided such tax be in proportion to the assessed valuation of the towns. In New Hampshire the convention upon the recommendation of the county commissioners, votes the amount of county taxes to meet the necessary appropriation for the next two years, but the tax for each year is voted separately and must be collected separately. The clerk of the county convention returns a certified copy of the record of the proceedings of the convention to the clerk of the county commissioners. The clerk of the county commissioners then transmits to the county treasurer a certified copy of every vote for raising the

county tax. In none of the New England states is there a separate office of county clerk. Wherever there is need of such an officer his duties are discharged by the clerk of the court, either county, or superior.

The register of deeds as a county office is found in Maine, New Hampshire and Massachusetts. In the other New England states the function of recording wills is performed by the towns. In the three states in which the office of register of deeds is a county office, it is elective. The term is four years in Maine and two years in New Hampshire. The number of registers in Massachusetts varies in the different counties, from one to three, and the registers are elected by the voters of each registry district. In New Hampshire and Maine counties may be divided into two registry districts. In case of such division in New Hampshire the voters of each of the districts formed elect a register. In Maine if there are two districts the register appoints a clerk to act as register in the district outside the shire town. Vacancies are filled in the office of register of deeds in the following ways: in Maine by the governor and council, until the next regular election; in Massachusetts by the county commissioners until the next annual election; in New Hampshire by the supreme court to fill out the unexpired term. The register of deeds may be removed for misconduct or incapacity, by the supreme court in Maine and New Hampshire and by the county commissioners in Massachusetts. Registers of deeds in all three states are required to give bonds approved by county commissioners.

Coroners, or medical referees as they are called in New Hampshire, are regarded as county officers in Maine, New Hampshire and Connecticut. In other states they are town officers, though generally appointed by the state. In Maine and New Hampshire they are appointed by the governor and council, for an indefinite term in Maine, and for five years in New Hampshire. In Connecticut appointment is made by the superior court for a period of three years. In Maine and New Hampshire there is one, or more, coroners for each county, while in Connecticut there is but one appointed though the coroner may appoint medical examiners, one for each town. In Massachusetts medical examiners are appointed for seven years, by the governor and council. The number here varies with the county. In Maine bonds approved by the county commis-

sioners are required of coroners. In Connecticut, the superior court judges may remove coroners for cause and appoint successors.

Other county officers which exist in only one state are: in Vermont deputy clerk of the court, appointed by the judges of the county court; high bailiff elected for two years, probation officer appointed by the county court judges; three jail commissioners and three road commissioners also appointed by the county judges. In Connecticut there are three jury commissioners and a health officer appointed by the judges of the superior court. The county commissioner also appoint prosecuting agents to prosecute violations of the liquor laws. In New Hampshire, there is a superintendent of the county almshouse appointed by the county commissioner.

From this brief account of county organization in New England it is plainly evident that to speak of "county government of New England" is erroneous, if such designation connotes county organization of a uniform type. The variations in number of county officials, in mode of election, in term, in state control and in powers, are probably greater than in any six states taken together in any other section of the country.

In spite of the variety of organization of county government in New England there are a few generalizations that may be made respecting it. In New England the function of the county is largely restricted to the administration of justice, and in consequence, the number of county offices is less than in other states. Appointment of county officers, particularly those connected with the courts, more generally prevails here than elsewhere. State administrative control, seen in methods of appointment, removal and bond requirements, is more pronounced in the New England states than in those outside of this section. But the most marked difference between county government in New England and elsewhere, is that which has often been pointed out, namely, fewer functions performed by the county in the New England states owing to the unusual importance of the town.

Advocates of the "short ballot" are finding in county government an important sphere for its application. This is due to the fact of the large number of elective county offices in most states and, also, to the fact that the duties of county officers, are mostly clerical and administrative. The need of the "short ballot" reform is less urgent in county government in New England than in many states outside

of this section, but even here it would be an aid to efficient administration. Three of the New England states especially need such reform in their county system. These are Maine, New Hampshire and Vermont. In Maine, with the exception of the coroner, all of the eleven county officers are elected. The fact that these are elected for fairly long terms mitigates somewhat against the evils of the elective principle. In New Hampshire all of the county officers, except the judge of probate, clerk of court and medical referees, are elected. Their term is particularly short, being for two years only. In Vermont, with the exception of the clerk of court and register of probate, all county officers, including the county judges, are elected for two years. In the other three New England states the principle of appointment is more generally employed. Of the ten classes of county officers in Massachusetts four are appointed. The six that are elected are: county commissioners, register of probate, register of deeds, clerk of the court, district attorney and sheriff. Of the ten classes of county officers in Connecticut the sheriff is the only strictly county officer that is elected by popular vote. The probate judge not a county officer in Connecticut is also elected. In Rhode Island the only two county offices, namely, county clerk and sheriff, are elected by the legislature.

Bringing together the best features of each of the New England states, an organization of county government may be formed, which might serve somewhat as a model. Such organization would borrow from New Hampshire and Massachusetts the system of superior judges appointed for life acting as judges of the county. The clerk of the court would be appointed by the court for an indefinite term as in New Hampshire. The sheriff would be elected for five years following the method of Massachusetts and Connecticut. The question might be raised whether in a model organization of county government the sheriff should not be appointed either by the governor or by the superior court, but no New England state having such a system, that method can not be considered in forming a model from the existing methods. The Rhode Island method of election by the legislature does not commend itself as a wise general principle. The district attorney would be appointed, in accordance with the method in Connecticut, by the judges of the superior court. The judge of probate would be appointed by the governor for an indefinite term as is now the case in New Hampshire and Massachusetts. The

register of probate would be appointed by the judge of probate following the method now employed in Vermont. The register of deeds because of the present practice would be obliged to be elective. The longest term that could be given to that office and still adopt the method of a New England state would be four years. It is strange that this office, the work of which is so entirely clerical and routine, should everywhere have been made elective. The organization of the county commissioners in a model form would be a board of three, elected one, in each biennial election, for six years, the method now employed in Maine. The county treasurer being necessarily accountable to the county commissioners would be appointed by the county commissioners following the method of Connecticut. The county auditor would be appointed by the governor, the present method in Massachusetts. All other necessary county officials would be appointed by their superiors in order to secure official responsibility. This composite county organization based upon actual methods would provide for appointment of all county officers except sheriff, register of deeds and county commissioners. This organization would require the election of only three county officers at one time, being one less than that required by the new "short ballot" county government of Los Angeles county, California.